

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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BILL DRAFT 2007-RBxz-30 [v.3] (03/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/4/2008 5:05:03 PM

Short Title: Simplify Gift Tax.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT AN ACT TO REFORM THE STATE GIFT TAX SO THAT IT IS BASED
ON THE FEDERAL GIFT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 105 of the General Statutes is repealed.

SECTION 2. Chapter 105 of the General Statutes is amended by adding a
new Article to read:

"Article 1B.

"Gift Taxes.

""§ 105-32.20. Gift tax.

(a) Definition. – As used in this Article, the term 'taxable gift' means the transfer by gift which is included in taxable gifts for federal gift tax purposes under Section 2503 and Sections 2511 to 2514, inclusive, and Sections 2516 to 2519, inclusive, of the Code, less the deductions allowed in Sections 2522 to 2524, inclusive, of the Code. In the administration of the tax under this Article, the Secretary of Revenue shall apply the provisions of Sections 2701 to 2704, inclusive, of the Code.

(b) Imposition of tax. – A gift tax is imposed on a gift when a federal gift tax is imposed on the gift under Section 2501 of the Code and any of the following apply:

(1) The donor was a resident of this State at the time the gift was made and the gift consisted of one or more of the following:

a. Real property located in this State.

b. Tangible personal property that was located in this State at the time the gift was made.

c. All intangible personal property.

(2) The donor was not a resident of this State at the time the gift was made and the gift consisted of one or more of the following:

a. Real property located in this State.

b. Tangible personal property that was located in this State at the time the gift was made.

(c) Computation of tax. – The tax imposed by this Article is an amount equal to the excess of a tentative tax, computed at the rates contained in subsection (d) of this section, on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over a tentative tax, computed at the rates contained in subsection (d) of this section, on the aggregate sum of the taxable gifts for each of the preceding taxable periods. Sections 2503 and 2504 of the Code shall apply in computing the tax. In determining taxable gifts for any preceding calendar period and in computing the gift tax imposed under this section, transfers excepted from tax under former G.S. 105-188(g) shall not be considered.

(d) Rate. – The tax imposed by this Article shall be at the rates of tax, based on the value of the taxable gifts made by the donor for the calendar year, as follows:

Amount With Respect to Which

Tentative Tax is Computed:

Rate

0 to \$1,000,000

0%

\$1,000,001 but not over \$1,040,000

5.6% of the excess over
\$1,000,000

Over \$1,040,000 but not over \$1,540,000

\$2,240 plus 6.4% of the excess
over \$1,040,000

Over \$1,540,000 but not over \$2,040,000

\$34,240 plus 7.2% of the excess
over \$1,540,000

Over \$2,040,000 but not over \$2,540,000

\$70,240 plus 8% of the excess
Over \$2,040,000

Over \$2,540,000 but not over \$3,040,000

\$110,240 plus 8.8% of the
excess over \$2,540,000

Over \$3,040,000 but not over \$3,540,000

\$154,240 plus 9.6% of the
excess over \$3,040,000

Over \$3,540,000 but not over \$4,040,000

\$202,240 plus 10.4% of the
excess over \$3,540,000

Over \$4,040,000 but not over \$5,040,000

\$254,240 plus 11.2% of the
excess over \$4,040,000

Over \$5,040,000 but not over \$6,040,000

\$366,240 plus 12% of the excess
Over \$5,040,000

Over \$6,040,000 but not over \$7,040,000	\$486,240 plus 12.8% of the excess over \$6,040,000
Over \$7,040,000 but not over \$8,040,000	\$614,240 plus 13.6% of the excess over \$7,040,000
Over \$8,040,000 but not over \$9,040,000	\$750,240 plus 14.4% of the excess over \$8,040,000
Over \$9,040,000 but not over \$10,040,000	\$894,240 plus 15.2% of the excess over \$9,040,000
Over \$10,040,000	\$1,046,240 plus 16% of the excess over \$10,040,000.

(e) Value of Gift. – The value of a gift is determined in accordance with the Code. If any property composing part of the gift is located in a state other than North Carolina, the amount of tax payable depends on whether the donor was a resident of this State at the time of the gift. If the donor was a resident of this State at the time of the gift, the amount of tax due under this section is reduced by the lesser of the amount of the gift tax paid the other state or an amount computed by multiplying the amount otherwise due by a fraction, the numerator of which is the value of the taxable gift that was located or had a tax situs in another state at the time of the gift and the denominator of which is the value of the total taxable gift. If the donor was not a resident of this State at the time of the gift, the amount of tax due under this section is an amount computed by multiplying the amount otherwise due by a fraction, the numerator of which is the value of real or tangible personal property that was located in North Carolina at the time of the gift plus the value of any intangible property that had a tax situs in North Carolina at the time of the gift and the denominator of which is the value of the taxable gift.

(f) In computing the tax under subsection (c) of this section with respect to any transfer made prior to the effective date of this Article, the tentative tax shall be computed on the taxable gifts as reported on the taxpayer's federal gift tax return for the taxable period in question and the value of such taxable gifts shall be the value as finally determined for federal gift tax purposes.

(g) Whenever used in this section in computing the gift tax imposed or the allowable credit against gift tax, the term "preceding calendar period" means all calendar years since January 1, 1948.

"§ 105-32.21. When return required; due date of tax and return.

(a) When Return Required. – Any individual, whether resident or nonresident, who makes a gift in the calendar year to which G.S. 105-32.20 applies shall file a gift tax return under this Article if a federal gift tax return is required with respect to such gift. The return must be filed on a form provided by the Secretary.

(b) Due Date. – The gift tax imposed by this Article is due with the gift tax return is due. The gift tax return is due on the date a federal gift tax return is due.

(c) Extension. – An extension of time to file a federal gift tax return is an automatic extension of the time to file a gift tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for filing a gift tax return or paying the tax imposed under this Article.

(d) Administration. – Article 9 of this Chapter applies to this Article.

"§ 105-32.22. Lien for tax; collection of tax.

The tax imposed by this Article is a lien upon all gifts that constitute the basis for the tax for a period of 10 years from the time they are made. If the tax is not paid by the donor when due, each donee is personally liable, to the extent of his or her respective gifts, for such much of the tax as has been assessed, or may be assessed, thereon. Any part of the property comprised in the gift that has been sold by the donee to a bona fide purchaser is divested of the lien imposed by this section and the lien, to the extent of the value of the gift, shall attach to all of the property of the donee (including after-acquired property) except any part sold to the bona fide purchaser.

If the tax is not paid within 30 days after it has become due, the Department of Revenue may use any of the methods authorized in this Subchapter for the collection for other taxes to enforce the payment of taxes assessed under this Article.

If any proceeding by warrant or otherwise to enforce the collection of the tax, the donor is liable for the full amount of the tax due by reason of all the gifts constituting the basis for the tax, and each donee is liable only for so much of the tax as may be due on account of his or her respective gift.

"§ 105-32.23. Death of donor within three years; time of assessment.

If a donor dies within three years after filing a return, gift taxes may be assessed at any time within those three years, or on or before the date of final settlement of the donor's State estate taxes, whichever is later.

"§ 105-32.24. Federal corrections.

If the amount of a taxpayer's taxable gifts, for federal gift tax purposes, reported on such taxpayer's federal gift tax return for any calendar year, is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall, within six months after being notified of the correction or final determination by the Internal Revenue Service, file a gift tax return with the Secretary of Revenue reflecting the corrected or determined taxable gifts. The Secretary of Revenue shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this Section, the term "all available evidence" means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this Section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 3. This act becomes effective on or after January 1, 2008, and applies to gifts made on or after that date.